

Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 TYCO INTERNATIONAL, LTD.,

4 Plaintiff,

5 v.

03 Civ. 2247 (TPG)

6 MARK SWARTZ,

7 Defendant.

8 -----X

9 New York, N.Y.
10 October 16, 2012
10:55 a.m.

11 Before:

12 HON. THOMAS P. GRIESA,

13 District Judge

14 APPEARANCES

15 BARTLIT BECK HERMAN PALENCHAR & SCOTT

Attorneys for Plaintiff

16 BY: FRED BARTLIT

MARK LEVINE

17 ABBY MOLLEN

and

18 McGUIRE WOODS

Attorneys for Plaintiff

19 BY: CHARLES McINTYRE

20 STILLMAN FRIEDMAN & SHECHTMAN, P.C.

Attorneys for Defendant

21 BY: MICHAEL GRUDBERG

JAMES MITCHELL

Cagntycl

Boies - direct

1 \$12.5 million on the W-2 form?

2 A. Not to my recollection. My recollection is he said it was
3 a mistake. I do not remember a discussion of what the nature
4 of that mistake was.

5 Q. What did you suggest be done?

6 A. I said I thought it had to be paid back promptly.

7 Q. With or without interest?

8 A. With interest.

9 Q. And what did Mr. Swartz say in response?

10 A. He agreed he would do that.

11 Q. Did Mr. Swartz at any time during this conversation suggest
12 that he could file an amended W-2 form or tax return to fix the
13 mistake?

14 A. Not to my recollection.

15 Q. After you talked to Mr. Swartz, did you at that same day,
16 July 17, speak to anyone else at Tyco about the subject of the
17 loan forgiveness and bonus?

18 A. Yes.

19 Q. Who was that?

20 A. Mr. Jeff Fort.

21 Q. You said earlier that Jeff Fort was a director in the
22 summer of 2002. Between the time that Mr. Kozlowski resigned
23 on June 3 and Mr. Breen came in on July 25, during that month
24 and a half, did Mr. Fort have another role as well?

25 A. Yes.

Cagntycl

Boies - direct

1 Q. What was his extra role, besides being a director?

2 A. He was the interim chief executive officer.

3 Q. And where is it that you met with Mr. Fort on July 17?

4 A. In Mr. Fort's personal office at the Tyco suite of offices.

5 Q. And when was that meeting with Mr. Fort compared to when
6 you met with Mr. Swartz? In other words, was it shortly
7 thereafter?

8 A. Very shortly thereafter.

9 Q. Did you --

10 A. I went from my meeting with Mr. Swartz into Jeff Fort's
11 office.

12 Q. Did you tell Mr. Fort about the \$12.5 million bonus and
13 loan balance reduction to Mr. Swartz?

14 A. Yes.

15 Q. What was Mr. Fort's reaction?

16 A. He asked me what I thought should be done. I said that I
17 had told Mr. Swartz that I thought the money needed to be
18 repaid promptly.

19 He asked me whether Mr. Swartz had agreed to repay the
20 money. I said that he had. And shortly thereafter he called
21 Mr. Swartz into his office to confirm that Mr. Swartz was, in
22 fact, going to repay the money.

23 Q. And what did Mr. Fort say to Mr. Swartz?

24 A. He said that I had explained that there had been this
25 transaction and that I had told him that, as I had told

Cagntycl

Boies - direct

1 Mr. Swartz -- I'm sorry that I told Mr. Fort that Mr. Swartz
2 was going to repay the amount and was that true, and Mr. Swartz
3 said it was true.

4 Q. Do you understand that Mr. Swartz subsequently did repay
5 the \$12.5 million plus interest?

6 A. Yes.

7 Q. So let's leave July 17 --

8 THE COURT: Obviously Kozlowski is gone, so you can't
9 see him, but was there any discussion on the Kozlowski \$25
10 million?

11 THE WITNESS: Yes, your Honor, there was.

12 And I think not at this particular point in time but
13 thereafter, and we did seek to recover that money from
14 Mr. Kozlowski as well. He had already gone, but we were in
15 contact with his lawyers. We made no progress with
16 Mr. Kozlowski and ultimately sued him for it.

17 Q. Now, moving about a week, actually eight days later, on
18 July 25, did Tyco bring in a new chief executive officer?

19 A. Yes.

20 Q. Who was that?

21 A. Mr. Ed Breen.

22 Q. After Mr. Breen became CEO was any decision made about
23 whether to keep Mr. Swartz as the chief financial officer?

24 A. Yes.

25 Q. What was that decision?

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Cahntyc2

Swartz - direct

1 repay the amount to the company with interest as if the loan
2 had never been forgiven.

3 Q. Would you remind us the year of the journal entry that had
4 recorded the loan credit?

5 A. 1999.

6 Q. What else did you say to each other?

7 A. I told him that it was a mistake. I told him that it was
8 not on my W-2, he was correct. And while it was hard for me to
9 go ahead and repay it, if he thought that was best solution for
10 me and the company, I would go ahead and do that.

11 Q. Did he say it was only about twelve and a half million, or
12 did he mention that they had found entries related to other
13 amounts?

14 A. There were two other amounts, and I believe the total was
15 \$38.5 million.

16 Q. We don't need to mention the name of the one-million-dollar
17 person, but the \$25 million man was Dennis Kozlowski, is that
18 correct?

19 A. That's correct.

20 Q. What happened next, Mr. Swartz?

21 A. Mr. Boies and I went over to John Fort's office and
22 recounted the conversation to him, and I told Mr. Fort that I
23 was going to go ahead and repay the loan with interest. And
24 then I went ahead and repaid the loan.

25 Q. Somebody calculated the interest from 1999?

Cahntyc2

Swartz - direct

1 A. Yes, based on the key employee loan rate.

2 Q. When did you repay it?

3 A. I believe it was that month, shortly after the meeting on
4 July 17.

5 Q. Now, after that July 17 meeting, you remained Tyco's CFO?

6 A. That's correct.

7 Q. Ultimately there came a time when you signed an agreement
8 to resign your position on the board of directors, correct?

9 A. That's correct.

10 Q. And agreed that day that you would leave Tyco once a new
11 CFO had been selected. Do I have that right?

12 A. That's correct.

13 Q. What was the date of the agreement that you signed?

14 A. August 1.

15 Q. For the moment, I would like to focus you, Mr. Swartz, on
16 the period from June 3, 2002, through August 1 when you had
17 those negotiations. OK?

18 A. Yes.

19 Q. During that period of time, did your responsibilities as
20 CFO during the period from the commencement of the expanded
21 Boies investigation to the date that you sad down with the
22 Boies lawyers as negotiators, did your responsibilities as CFO
23 change in any way?

24 A. They increased significantly during that time period.

25 Q. Could you tell me what you mean by that.

Cahntyc2

Swartz - cross

1 the \$12.5 million, right?

2 A. Correct.

3 Q. And you paid that back to Tyco with interest?

4 A. Yes.

5 Q. And you were ordered by the Court to pay back another
6 amount of money, I think it was \$37.7 million, correct?

7 A. If that's the right amount, yes.

8 Q. That's the criminal court?

9 A. Correct.

10 Q. In the New York State court system?

11 A. Yes.

12 Q. Did you pay interest to Tyco on that money?

13 A. I did not.

14 Q. The next topic, you just testified about this ERA executive
15 retirement agreement that has grown from 25 million to 50
16 million?

17 A. Yes.

18 Q. Now, you also said you had not filed a claim immediately
19 after August 14, 2002, is that right?

20 A. That is correct.

21 Q. In fact, recently, in this past year, is when you filed the
22 lawsuit against Tyco to seek that ERA, right?

23 A. That's correct.

24 Q. That's about ten years later, right?

25 A. Yes.